United Nations CCPR/C/112/D/1965/2010

International Covenant on Civil and Political Rights

Distr.: General
19 January 2015

Original: English

Human Rights Committee

Communication No. 1965/2010

Views adopted by the Committee at its 112th session (7–31 October 2014)

Submitted by:	John Njie Monika (represented by counsel, Martin Dikanjo Esingila)
Alleged victim:	The author
State party:	Cameroon
Date of communication:	11 January 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 10 August 2010 (not issued in document form)
Date of adoption of Views:	21 October 2014
Subject matter:	Assault by a government representative, not followed by investigation or prosecution
Procedural issues:	Exhaustion of domestic remedies; lack of substantiation
Substantive issues:	Right to life; prohibition of torture and cruel and inhuman treatment: Right to liberty; right to protection from inhuman treatment; right to family life; right of children to protection; right to an effective remedy; discrimination and equal protection of the law
Articles of the Covenant:	Articles 2 (paras. 1 and 3); 6 (para. 1); 7; 9 (paras. 1–2) ; and 26
Articles of the Optional Protocol:	Articles 2 and 5 (para. 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 1965/2010*

Submitted by:	John Njie Monika (represented by counsel, Martin Dikanjo Esingila)
Alleged victim:	The author
State party:	Cameroon
Date of communication:	11 January 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 October 2014,

Having concluded its consideration of communication No. 1965/2010, submitted to the Human Rights Committee on behalf of John Njie Monika under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is John Njie Monika, born on 6 January 1959 at Victoria (now Limbe), Cameroon. He claims violations of his rights under articles 2 (para. 3), 6, 7, 9 and 26 of the Covenant. The Optional Protocol to the Covenant entered into force for the State party on 27 September 1984. The author is represented.

1.2 On 18 October 2010, the Special Rapporteur on new communications and interim measures denied the State party's request that the admissibility of the communication be considered separately from the merits.

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* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Christine Chanet, Ahmed Amin Fathalla, Cornelis Flinterman, Walter Kälin, Yuji Iwasawa, Gerald L. Neuman, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The text of an individual opinion of Committee member Fabián Salvioli (partially dissenting) is appended to the present Views.

The facts as submitted by the author

2.1 The author was a contractor, businessman and creditor to the Limbe Urban Council, and the Manager of Mile Six Tourist Beach Resort situated in Limbe in the Fako Division of the South-Western Province, under the supervisory authority of the Ministry of Tourism. On 29 August 2002, the author had an appointment with the Government delegate heading the Limbe Urban Council, Samuel Ebiama Lifanda, to demand the payment of some long overdue bills totalling 7,946,956 CFA francs, with respect to contracts he had executed between 1997 and 1998. Even though he presented himself around 9.30 a.m., the author was only received as the last visitor, when everybody else had left, around 2.30 p.m.

2.2 During the meeting, the Government delegate declared that the author had "disgraced" him by taking the Mile Six Beach Resort away from him. Thereafter, the delegate called three council officers into the office, who, seemingly under previous instructions, started to severely beat the author. The author managed to escape but was intercepted by other council officers before he could leave the building and severe blows were administered to his eyes and face, which immobilized him and caused severe bleeding. While he was lying on the floor, some of the council police officers held his throat and mouth almost to the point of suffocation to prevent him from shouting. At the same time, the Government delegate and other council officers administered him kicks, punches and blows over his body. The author managed to leave the Limbe Urban Council building and was helped by unknown persons to the public security office, and thereafter to the hospital. During the assault, the author's cell phone, his purse containing the amount of 113,000 CFAF and his jacket were taken away. The author was taken to the police station by passers-by. The Government delegate refused to accompany him. However, about an hour later, as the author was about to go to hospital, the Government delegate who assaulted him appeared holding an empty petrol canister and claimed that the author had tried to set fire to his office. The inspection of the Government delegate's office revealed no trace of petrol. The author was hospitalized at the Limbe Regional Hospital.

2.3 During the author's stay at the hospital, he received threats by the Government delegate that he would be killed if he left the premises. The medical doctor who treated the author retracted his medical certificate, as a result of pressure from the administration and Government delegate to do so.[1]

2.4 On 25 October 2002, the author was assaulted anew by the head of the Limbe Urban Council municipal police and five other individuals. He claims that he was then arrested and detained within the hospital premises, where he had stopped to buy medication. The author annexes an affidavit signed by a court bailiff, which indicates that the author was arrested and detained within the Manyemen Annex to the Limbe Hospital by the head of the Limbe Urban Council municipal police holding a detention order signed by the Senior Divisional Officer for Fako. The author was taken to the gendarmerie post and released 20 minutes later. On the same day, only 30 minutes after his release, the author was arrested again by an officer of the Limbe gendarmerie post, holding an arrest warrant dated 30 August 2002, signed by the Fako Divisional Officer, ordering his arrest and detention for a

[1] The author annexes a statement signed by the medical doctor who treated him on 29 August 2002 (dated 22 October 2002), in which the latter notes that he issued a medical certificate, which he later withdrew "since the actual part of the body that was gravely affected was the eye", whereas he was a surgeon. The certificate refers to multiple trauma of the entire body (contusio cerebri, soft tissue trauma of the thoracic cage, multiple bruises, generalized myositis; and post-traumatic blind left eye). He attaches four additional medical certificates describing his medical condition, in particular his left eye ("prognosis for the left eye is very poor").

period of 15 days, renewable. The author followed the officer to the State Counsel Chamber.

2.5 On 17 September 2002, the author filed a complaint before the State Prosecutor-General of the South-Western Province, which was received on 19 September 2002, to which he annexed a picture of his damaged left eye. On 3 October 2002, he filed a further complaint with the State Prosecutor-General of the South-Western Province regarding the threats he received while in hospital after the incident of 29 August 2002.[2] In November 2002, the State Prosecutor-General of the South-Western Province forwarded the author's complaints to the Commissioner of Police, the Department for Public Security in Limbe and the Provincial Chief of Judicial Police "for thorough investigation". On 3 October 2002, the author filed, from hospital, a further complaint with the State Prosecutor in Limbe. On 29 October 2002, the State Prosecutor in Limbe acknowledged receipt of the author's complaint.

2.6 On 13 November 2003, the author sent a letter to the Government delegate, which was served on 20 November 2003, concerning the illegal retention of his property and his request for restitution. On 17 February 2004, the charges against the author for disturbance of a public office were withdrawn. Having waited for an investigation in vain, the author filed a complaint against the Government delegate before the President's Office. On 1 March 2005, the Deputy Secretary-General of the President's Office informed the author that his petition had been redirected to the Vice Prime Minister and the Minister of Justice for appropriate action. On 20 April 2005, the author also addressed a complaint to the Vice Prime Minister and the Minister of Justice. Having received no response despite follow-up actions, he filed a further complaint with the President on 10 August 2006, demanding compensation for permanent loss of his left eye vision.[3] No action has been initiated as a result, nor had he even received acknowledgement from the Presidency. On 25 March 2008, the author received a letter by the National Commission on Human Rights and Freedoms informing him that his complaint to the President has been transmitted to the Vice Prime Minister and Minister of Justice for appropriate action.

2.7 The author further notes that he stood trial further to the complaint filed by the Government delegate under section 185 of the Cameroon Penal Code (for disturbance of a public office). The Prosecution's case failed during the hearing and the matter was withdrawn. None of the author's own complaints was considered.

The complaint

3.1 The author submits that his assault, beating, blows to his eyes and face were in violation of articles 6, 7 and 9, paragraph 1, of the Covenant. He further claims that the Government delegate's threat against his treating medical doctor and the threats that he would be killed if he left the hospital were in violation of article 6 of the Covenant.

3.2 With regard to his arrest, detention and assault when he was buying medical drugs at a hospital, the author claims that he is a victim of a violation of article 9, paragraphs 1 and 2, of the Covenant.

3.3 The author further claims that no effective remedy was available to him in violation of article 2, paragraph 3 (a) and (b), of the Covenant. Furthermore, the absence of any prosecution and adjudication of the author's complaints are in violation of articles 26 and 2, paragraph 1, read in conjunction with articles 6, 7 and 9, paragraph 1, of the Covenant.

[2] The author annexes copies of the complaints.

[3] Attested by the various medical certificates submitted.

State party's observations on admissibility

4.1 On 4 October 2010, the State party submitted that the author's communication should be declared inadmissible for non-exhaustion of domestic remedies. It stated that the author merely complained before the judicial police and sent communications of an administrative nature to members of the Government and the Presidency. The State party contends that the author should have filed proceedings before the competent magistrate (*plainte avec constitution de partie civile*) under section 157 of the Code of Penal Procedure, which shall set the criminal action in motion; it further submits that it was open to the author to seize the presiding judge with a private prosecution (*citation directe de particulier*), which can be initiated either by the Public Prosecutor's Office, or by the victim himself, in accordance with the provisions of section 290 of the Code of Penal Procedure.

4.2 According to the State party, as the author was legally represented, he ought to have known the above mentioned legal avenues, which were open to him. As he did not pursue any, the author must be considered to have failed to exhaust domestic remedies.

Author's comments on the State party's observations on admissibility

5.1 On 8 December 2010, the author provided comments on the State party's observations on admissibility.

5.2 The author rejects the contention that domestic remedies have not been exhausted. He submits that even though, under sections 157 and 290 of the Code of Penal Procedure, a victim can initiate criminal prosecution either through the *constitution de partie civile*, or through a private prosecution before a presiding judge or the competent court, (a) these procedures remain inaccessible due to the attendant costs associated with the proceedings; and (b) they are ineffective.

5.3 The author submits that section 158(1) and (2) of the Code of Criminal Procedure require that the litigant setting the criminal proceedings in motion: "shall, at the risk of his complaint being inadmissible, deposit at the registry of the court of first instance an amount considered sufficient for defraying the costs of the proceedings. The amount shall be fixed by an order of the examining magistrate. An additional deposit may be fixed in the course of the inquiry." According to the author, such cash deposits are not linked to the quantum, and practice shows that such amounts vary. Within the Fako courts area, orders by examining magistrates usually range from 160,000 to 500,000 CFAF and above. The author submits that he became incapacitated and had a lengthy stay at hospital, which entailed significant costs. He stresses that he is the sole breadwinner of a family of six and thus does not have the means to make such deposits.

5.4 The author further stresses that, even if he had filed such a complaint, under section 160 of the Code of Penal Procedure, after the deposit of the required amount, the examining magistrate shall forward the complaint to the State Counsel. The State Counsel may then either declare the complaint inadmissible or order the commencement of an inquiry against persons known or unknown. A person mentioned in the complaint may also be heard as witness. In the present case, the author submits that he made prior complaints to the State Prosecutor and to the State Prosecutor-General, in accordance with section 135(1) of the Code of Penal Procedure, to no avail. Neither of these authorities initiated an investigation.

5.5 Similarly, according to the author, the institution of proceedings under section 290 of the Code of Penal Procedure, by way of private prosecution, is also subject to heavy financial prerequisites, which he could not have met, having become indigent. Furthermore, under section 128 of the Code of Penal Procedure, the Legal Department is a principal party

to the trial. The author stresses that he regularly seized the Legal Department by addressing his complaints, which remained unanswered, to them.

5.6 The author adds that the acts about which he complained would have been qualified as assault, unintentional harm and false arrest, all of which are misdemeanours, committed and reported in 2002. The Code of Penal Procedure, which entered into force in 2007, provides under section 65(4) that misdemeanours are time-barred after three years. As such, the action would have been time-barred by law. No other recourse existed prior to the coming into force of the Code of Penal Procedure. Accordingly, the author submits that none of the remedies suggested by the State party was effective, and invites the Committee to declare his communication admissible.

State party's observations on merits

6.1 On 14 April 2011, the State party argued that the claims are without merit. The State party first submits that the author lacks credibility, as he did not disclose in his communication the fact that the reason for his appointment of 29 August 2002 with the Government delegate heading the Limbe Urban Council was a request for assistance, after the author claimed that his house had been set on fire.[4] According to the State party, the author, who truncated the reasons for his presence within the Government delegate's office, does not indicate what caused the dispute with the latter. Consequently, the State party is of the view that the author's contentions under articles 6 and 7 of the Covenant are ill-founded.

6.2 Concerning the author's right to liberty and security, the State party submits that the author's allegations are incorrect. Following the incident of 29 August 2002, the Senior Divisional Officer of the Fako Division issued on 30 August 2002 an order for the author's administrative detention, for a period of 15 days, renewable, for "acts of banditry and attempted arson on the Government Delegate Limbe Urban Council, and disturbance of public service at the Limbe Urban Council".[5] This order, however, could not be executed, owing to the intervention of the State Prosecutor.[6] The State party also refers to a letter from the Government delegate of the Limbe Urban Council dated 3 September 2002, addressed to the Minister of Justice, in which the delegate complains about the biased and lax attitude of the Prosecutor, who failed to arrest the author after the latter attempted to murder him by assaulting him and pouring petrol on him with a view to setting him on fire on 29 August 2002. The State party thus contends that the author benefited from judicial protection and that it cannot be sustained that his right to security was violated.

6.3 With respect to the principle of non-discrimination, the State party is of the view that the fact that charges were brought against the author, and were later withdrawn, do not reveal any discrimination. Article 75 of the Criminal Procedure Ordinance, then applicable in the common law parts of Cameroon, provides that "in any trial …, any prosecutor may at any time before the judgment is pronounced … withdraw from the prosecution of any person either generally or in respect of one or more of the offences with which such person is charged". Such prerogatives should be analysed as part of the prosecutorial discretion.

[4] The State party annexes a letter dated 26 August 2002, signed by the author, entitled "appeal for assistance", addressed to the Government delegate (Limbe Urban Council) in which the author solicits assistance on behalf of his family, who were the victims of a fire on 25 July 2002.

[5] Document annexed by the State party.

[6] The State party annexes an affidavit from a police officer dated 7 November 2002, which submits that: (a) the arrest could not take place as the author was admitted to hospital; (b) the author was arrested, and then released by order of the Prosecutor.

Given the Government delegate's claims of prosecutorial bias in favour of the author, the State party is surprised by the author's allegations of discrimination, and rejects them.

State party's further submission

7.1 On 28 April 2011, the State party reiterated that the author's communication should be declared inadmissible for non-exhaustion of domestic remedies, stressing that the author himself recognized the existence of a number of legal avenues of which he has not availed himself.

7.2 Concerning the cost of the procedures, invoked by the author as an impediment, the State party highlights the existence of legal aid, which was not sought by the author. With respect to author's comments on the lack of prospect of success of the procedures given the authorities' lack of reaction to his previous complaints, the State party stresses that the essence of the *citation directe de particulier* and of the *plainte avec constitution de partie civile* is precisely to overcome the passivity and inaction of prosecutorial authorities.

7.3 As for the author's contention that the relevant acts were time-barred, the State party submits that the acts took place in Limbe, in the English-speaking part of the country, which was governed by the Criminal Procedure Ordinance in force prior to 1 January 2007 (date of the entry into force of the Code of Penal Procedure), which ignored time limitations. The acts in question were thus not time-barred, as the author alleged, and the State party maintains that the communication should be declared inadmissible for non-exhaustion of domestic remedies.

Author's comments on the State party's observations on merits

8.1 On 17 June 2011, the author provided comments on the State party's observations on the merits of the communication, reiterating prior arguments and adding the following.

8.2 Regarding articles 6 and 7 of the Covenant, the author reiterates that the object of his visit to the Government delegate concerned the payment of overdue bills, referring to the audience form filled in this regard, to which the State party failed to refer. The author further stresses that the State party failed to comment upon his allegations that he was brutally assaulted by the Government delegate and his cohorts, causing severe bleeding and injuries, which amounted to torture, and was never investigated by the State party. The author further stresses that the State party failed to comment upon his allegation that, after he was hospitalized, the Government delegate conspired to eliminate him (referring to facts in paragraph 2.4).

8.3 Regarding article 9 and the State party's contention that the arrest warrant against the author was not executed, and that therefore no violation of his right to liberty and security occurred, the author notes that this position is at variance with the report of the police office submitted by the State party, which indicates that the author was arrested, taken to the gendarmerie post in Limbe, and that he was subsequently released following the orders of the State Prosecutor.

8.4 The author reiterates that the fact that his complaints were not ruled upon reveals a violation of his right to an effective remedy under article 2, paragraph 3, of the Covenant, as well as of the principle of non-discrimination under articles 2, paragraph 1, and 26 of the Covenant. He adds that the exercise of judicial discretion evoked by the State party was certainly predicated on class, the Government delegate being part of the political and

economic elite. He adds that new charges were brought against him (attempted murder and assault).[7]

Author's further submission on admissibility

9. On 5 July 2011, the author responded to the State party's observations on admissibility. He maintained that his communication is admissible, and reiterated that the remedies mentioned by the State party are not effective, and noted that he was not eligible for legal aid, as prior to the fire which destroyed his home, he was a businessman and creditor with adequate financial means.

State party's further submission on the merits

10.1 On 24 January 2012, the State party reiterated its previous submission, and noted that the parties disagree on the facts: while the author maintains that he was assaulted by the Government delegate heading the Limbe Urban Council, the latter alleges that the author attempted to murder him. A judicial investigation (*information judiciaire*) was launched with a view to clarifying the situation.

10.2 The State party maintains that the author's right to liberty and security was protected, as the Prosecutor opposed his detention, and thus the detention order was not enforced in his regard. The State party thus maintains that the author was not detained, as is confirmed in the author's affidavit annexed to his complaint.[8]

10.3 The State party rejects the author's allegations of discrimination, reiterating that a judicial investigation was initiated, and that charges were brought not only against the author (for attempted murder and disturbance of public service), but also against Lifanda Samuel Ebiama, the Government delegate heading the Limbe Urban Council (for charges of assault occasioning grievous harm and conditional threats).[9]

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

11.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

11.3 The Committee notes the State party's challenge to the admissibility of the communication on the ground that domestic remedies have not been exhausted. In the State

[7] The author annexes a summons (*mandat de comparution*) dated 25 February 2011 which indicates that the author was charged with attempted murder and assault.

[8] Dated 24 April 2004. The affidavit describes in the incident of 25 October 2002, when the author was at the Limbe Hospital to buy some medication, where the head of the Limbe Urban Council municipal police came to look for him, and showed him a detention order signed by the Senior Divisional Officer for Fako, dated 13 August 2002. The relevant section reads: "[the author showed] resistance to the arrest and was seriously battered … The crowd sympathized with him by preventing the false arrest … He was eventually taken to the gendarmerie post in Limbe, but the pressure from the crowd forced the gendarmes to release him 20 minutes later."

[9] Document dated 7 February 2011, Court of Appeal of the South-West, criminal proceedings against Njie Monika John and Lifanda Samuel Ebiama.

party's view, the author did not consider the possibility of bringing the matter before the competent magistrate (*plainte avec constitution de partie civile*) under section 157 of the Code of Penal Procedure, or seize directly the presiding judge with a private prosecution (*citation directe de particulier*) under section 290 of the Code of Penal Procedure. The Committee also notes that, according to the State party, the author has written letters to political and administrative authorities but has not, strictly speaking, initiated legal action. However, the Committee takes note of the author's argument, which is confirmed by the material available in the file, that on 17 September 2002, he lodged a complaint before the State Prosecutor-General of the South-Western Province in which he explicitly requested that investigations be undertaken into his allegations of assault concerning the incident of 29 August 2002. The author renewed his complaint with the State Prosecutor-General of the South-Western Province, on 3 October 2002, in which he referred to threats to his life, security and personal liberty. On the same day, he also filed a complaint with the State Prosecutor in Limbe on the same grounds.

11.4 The Committee recalls that, for the purposes of admissibility of a communication, the author must exhaust only the remedies effective against the alleged violation. The Committee takes note of the State party's argument that the *citation directe* or *plainte avec constitution de partie civile* were remedies which the author should have exhausted. The Committee notes, however, the author's argument, according to which under such procedures, any complaint is transmitted to the State Prosecutor, who may either declare the complaint inadmissible or, in the alternative, order the initiation of an investigation (para. 5.4). In the present case, the Committee recalls that the author has already filed two complaints with the Prosecutor-General of the South-Western Province and one complaint with the State Prosecutor in Limbe, on 17 September and 3 October 2002, all of which remained unanswered. In the light of the above, the Committee concludes that the remedies referred to by the State party would not have been effective, and that it is not precluded, under article 5, paragraph 2 (b), of the Optional Protocol, to consider the author's complaint with respect to the incident of 29 August 2002.

11.5 The Committee observes, however, that with respect to the incident of 25 October 2002, the author has not brought any complaint before the domestic authorities concerning his assault by the head of the Limbe Urban Council Municipal police and five other individuals (par. 2.4), as well as his subsequent arrest. In the absence of any reason adduced by the author as to the reasons why he failed to bring such complaint, the Committee declares this part of the communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

11.6 As to the author's claims under article 2, paragraph 1, read in conjunction with articles 6, 7 and 9, and under article 26 of the Covenant, relying on the absence of any prosecution and adjudication of the author's complaints, the Committee finds that the latter has not shown a difference of treatment with other individuals under the State party's jurisdiction, which would be based on social origin, property, birth or other status. The Committee therefore concludes that the author has failed to substantiate this allegation, and consequently declares this part of the communication inadmissible under article 2 of the Optional Protocol.

11.7 The Committee considers that the author has failed to sufficiently substantiate his claim under article 6 of the Covenant, for purposes of admissibility.

11.8 The Committee considers that the author has sufficiently substantiated the remainder of his claims, insofar as they raise issues under articles 7, 9, and 2, paragraph 3, of the Covenant and therefore proceeds to consider the communication on the merits on these counts.

Consideration of the merits

12.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

12.2 The Committee took note of the authors' claim that, on 29 August 2002, he had an appointment with the Government delegate heading the Limbe Urban Council, who, along with three additional municipality officers, administered severe blows to his eyes and face, causing severe bleeding and permanent damage to his left eye. The author has further alleged that, during his stay at the hospital, he received death threats from the Government delegate and that, on 25 October 2002, a municipal police and a gendarmerie officer assaulted, arrested and detained him on the Limbe Hospital premises.

12.3 The Committee notes that the State party has merely asserted that the facts are contested, as while the author has claimed that he was the victim of an assault, the Government delegate has maintained that he was the victim of an attempted murder by the author. The Committee considers, however, that the State party has not rebutted the author's claim that he was severely assaulted by an agent of the State party's Government, which caused him permanent loss of sight with his left eye, and that such acts remained unpunished. The Committee recalls its jurisprudence, according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant.[10] It further recalls its general comment No. 31 (2004), which lays down that where investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice.[11]

12.4 In the present case, the State party has failed to investigate effectively the responsibility of those Government officials suspected of the direct commission of the offences on 29 August 2002, and has given no explanation as to why an investigation was only commenced in February 2011, that is, nine years after the events complained about by the author took place, and which were first brought to the attention of the relevant authorities through the author's complaints addressed to the prosecutorial authorities on 17 September and 3 October 2002. While the State party has referred to the pending and overdue judicial investigations opened in February 2011, it has not submitted any information as to the results of such investigation, nor has it prosecuted anyone or explained the reasons for the lack of significant progress in this case before the courts.

12.5 In the light of the above, the Committee is of the view that the remedies relied upon by the State party have been unreasonably prolonged, and that the State party must be held to be in breach of article 7, read alone, and in conjunction with article 2, paragraph 3, for failure to promptly investigate the facts.

12.6 With regard to the alleged violation of article 9, the Committee took note of the author's claim that his right to security was breached on account of his assault by agents of the State party's Government on 29 August 2002, but considers that this part of the communication is subsumed under the author's claim under article 7 of the Covenant, which has been disposed of.

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[10] See communications No. 1619/2007, *Pestaño* v. *Philippines*, Views adopted on 23 March 2010, para. 7.2; No. 1447/2006, *Amirov and Amirova* v. *Russian Federation*, Views adopted on 2 April 2009, para. 11.2; and No. 1436/2005, *Sathasivam and Saraswathi* v. *Sri Lanka*, Views adopted on 8 July 2008, para. 6.4.

[11] General comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, para. 18.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 7, read alone and in conjunction with article 2, paragraph 3, of the Covenant.

14. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including by ensuring a swift conclusion of the judicial proceedings, which should include a thorough investigation of the author's allegations, the prosecution of perpetrators, and adequate compensation to the author. The State party is also under an obligation to take steps to prevent similar violations in the future.

15. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in the State party.

Appendix

[Original: Spanish]

Individual opinion of Committee member Fabián Salvioli (partially dissenting)

1. I share the opinion of the Committee in relation to its conclusions in *Monika* v. *Cameroon* (communication No. 1965/2010). However, for the reasons that I set out below, I believe that the Committee should also have addressed the issue of a possible violation of article 6 of the Covenant, inasmuch as the author's claims in this regard were clear and were not satisfactorily refuted by the State party. The death threats made following a brutal beating that resulted in the victim's loss of an eye were never properly investigated; nor were the perpetrators prosecuted or punished. Given these parameters, the Committee should not have found the author's claims with regard to a possible violation of article 6 to be inadmissible.

2. In view of the nature of this case, in which the victim has lost an eye as a result of violations of his human rights and has become indigent, the Committee should have stated that, as part of the redress to be provided, the State should place the proper rehabilitation measures (the necessary medical and/or psychological treatment) at the disposal of the author. This is a separate form of redress from the economic compensation to be provided for the violations suffered by the victim. The Committee should refine its policy on redress in individual cases in order to better fulfil its role of interpreting and applying the Covenant and the Optional Protocol thereto.